

ANTI-CONVERSION LAWS

A Fraud on the Constitution and Democracy of India

Davis Panadan ♦

1. Introduction

Religion is simultaneously one of the greatest sources of India's uniqueness and one of the biggest reasons for India's disunity. It is one of the factors that led Ramachandra Guha to call India an Unnatural Nation.¹ It has been the cause for riots, the fall of governments and terrorist attacks in recent times. The extent of anarchy that came to prevail in India in 'god's' name is probably unparalleled anywhere else in the world. Many religious conflicts have occurred in India since independence. This religious violence includes the targeting of religious institutions and the persecution of people on the basis of their religion. Many times this violence took the form of riots. Religious fundamentalism is a major cause for religious violence with both Hindu nationalism and Islamic fundamentalism that are prevalent in India. Major conflicts include the 1984 Anti-Sikh Riots, the riots in Mumbai in 1992, the 2002 Gujarat violence, and the 2007 Orissa Violence. Lesser incidents happen in many towns and villages of India. In the Kashmir region, many Kashmiri Pandits have been killed by Islamist militants in incidents such as the Wandhama massacre and the 2000 Amarnath pilgrimage massacre. Since March 1990, nearly 250,000 pandits have migrated outside Kashmir due to persecution by Islamic fundamentalists. Thus more than 1,000,000 people were affected by religious fundamentalism during 1984-2009 in India. Yet, religion remains as important to the average Indians as the air they breathe and the food they eat. In judging the overall religious freedom, the US State Department in its annual reports on religious freedom for 2007 noted signs of improvement in India along with Saudi Arabia and Vietnam compared to Iran, Iraq, Burma, Eritrea, North Korea, China and Egypt.²

♦**Davis Panadan** holds a Licentiate in Oriental Canon Law from the Oriental Institute, Rome and Masters in Civil Law from NLSU, Bangalore and continues his doctoral research at the same University. He teaches Civil Law at Dharmaram Vidya Kshetram, Bangalore.

¹Ramachandra Guha, *India after Gandhi*, London: Macmillan, 2007.

²Burkhart, Ross E. and Michael S. Lewis-Beck, "Comparative Democracy: The Economic Development Thesis," *American Political Science Review* 88 (December 1994), 903-10.

It was indeed a giant leap for every Indian citizen when India became a secular, democratic republic. The framers of the constitution ensured that every person within our borders would have the inalienable right to practice, profess and propagate their religion – subject of course to public order, morality and health. This fundamental right has now become part of the basic structure of the Indian constitution and its violation would have serious consequences for a country that today prides itself on being the largest democracy on the planet. And it is to this end that this study is committed, to discover whether the constitutionally guaranteed right to freedom of religion has been violated specifically by the Anti-Conversion Laws enacted by some states in the Indian Union.

At the very outset it is important to note that the Supreme Court has given sanction to the Anti-Conversion Laws enacted in Orissa³ and Madhya Pradesh⁴ in the landmark case *Rev. Stainislaus v. State of Madhya Pradesh*,⁵ and has in effect given sanction to the Anti-Conversion Laws enacted in other states, later.⁶ Thus, if at the end the conclusion is that the anti-conversion laws are *Ultra vires* to the constitution, the judgement will also have to fall with it. The implications of this are disturbing as the Judiciary has the fundamental duty of being the protector and guarantor of Fundamental Rights in this nation. The Judiciary would have failed and so would the Legislature for having passed such unconstitutional laws.

2. Historical Context

First we shall look, however, at the historical context of Anti-Conversion Laws. A number of princely states such as Raigarh, Patna, Sarguja, Udaipur, Bikaner, Jodhpur, etc., had enacted such laws that specifically prohibited conversion to Christianity. This was an attempt that sought to counter the missionary activities of the Christian Evangelists patronized by the British which saw many thousands of the low caste people embracing the new faith.⁷ Instead of seeking to improve the lowly conditions of these

³Orissa Freedom of Religion Act 1967.

⁴Madhya Pradesh Freedom of Religion Act (Dharma Swatantraya Adhiniyam) 1968.

⁵*Rev. Stainislaus v. State of Madhya Pradesh*, AIR 1977 SC 908.

⁶The majority of the other acts are based upon and nearly identical to the Orissa and MP Act.

⁷Justice P. Venugopal, *Why Anti-Conversion Laws Are Needed*, Organiser, May 11 2003, <http://www.organiser.org/11May2003/p14.htm>.

people that had prevailed for centuries, they sought to prevent them for joining a religion that at least granted them equality and acceptance.

When it was time to draft the constitution of India, there arose the problem of whether or not to include the right to propagate one’s religion in the freedom of religion that was to be guaranteed to all by the newly formed secular nation. Though a number of the members opposed this, citing reasons that many uninformed, backward people were being taken advantage of and converted while others were converting merely for some material benefit, it was held that the right to propagate was essentially bound to the freedom of speech and expression and that the two could not be mutually exclusive. According to K. M. Munshi,

I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of conscience has to be recognized. The word ‘propagate’ in this clause is nothing very much out of the way as some people think, nor is it fraught with dangerous consequences.⁸

The argument that conversions would be undergone for material gains or arising benefits was countered by the commitment undertaken to eradicate untouchability, establish a welfare state, guarantee fundamental rights and prescribe directive principles – in effect to ensure that all citizens would have an equal standard of living and quality of life. This is apparent from the words of T. T. Krishnamachari:

The fact that many people in this country have embraced Christianity is due partly to the status that it gave to them. Why should we forget that particular fact? An untouchable who became a Christian became an equal in every matter along with the high-caste Hindu, and, if we remove the need to obtain that advantage, apart from the fact that he has faith in the religion itself – well, the incentive for anybody to become a Christian will not exist.⁹

It is to be seen, however, whether the conversions are just a matter of progress, economically and socially. We also need to look into religious reasons for conversion. Conversion from one religion to another is also

⁸Constitution Assembly Debates, Official Report, vol. VII, 4 November 1948 to 8 January 1949, reprinted by Lok Sabha Secretariat, New Delhi, Third Reprint, 1999.

⁹Constitution Assembly Debates, 837.

need to be taken as a conscience matter and that the people have sufficient integrity in making the decision of conversion.

It is true that the many of conversions that occurred in the past were also because of the inhuman treatment meted out to half of the Indian population in the name of religion. Caste system was seen as integral to the Hindu *varnasrama dharma*. They sought to change to a religion that gave them better livelihood and granted them dignity and self-respect. It was this that the princely states sought to prevent, and this that the framers sought to tackle when they sought to bring about parity amongst all Indian citizens. Yet the very fact that Anti-Conversion Laws exist today bring up the second fact – that the Indian governments in power for the last sixty three years have failed miserably in their sacred duty to uplift the socially underprivileged classes of this nation thus bringing about the need for conversions.

3. Review of the Anti-Conversion Laws

It is now time to review the Anti-Conversion Laws prevalent in India today, and we shall look at the Orissa Act upon which almost all other Acts have been based and on which the judgement was pronounced. The Act stipulates that “No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.” It goes on to prescribe a punishment for the same which has a maximum sentence of up to two years imprisonment and a fine of Rs.10,000. “Any person intending to convert his religion, shall give a declaration before a Magistrate, 1st Class, having jurisdiction prior to such conversion that he intends to convert his religion on his own will.” Some of the laws actually give sanction to the re-conversion of a previously converted individual back to his previous faith which has to be an indigenous faith.¹⁰

The legal problems that arise from this are numerous. First is the definition of allurement, fraud, force, inducement etc. which are ambiguous enough to make selective use and abuse of the law possible.¹¹ Thus any act can be brought within the ambit of these terms thereby increasing the potential for malicious or falsely motivated prosecution.

¹⁰As prescribed by the Arunachal Pradesh Act clearly referring to Hinduism and associated sects.

¹¹Force, Fraudulent and Allurement were defined in the Tamil Nadu Act 2002 and yet are vague and formless.

Second, and possibly the biggest flaw in the law is that it assumes that the converted person has no agency in his conversion, and that the entire process is catalyzed and carried out solely by the converter. Thus the ones seeking to propagate are demonized as converters while the ones converted are defunct objects that the state must safeguard.

Then comes the underlying moral premise that conversion itself is an immoral act which seeks to uproot an individual from one religion and transplant him into another, thus devaluing both the religion and the person. It does not take into account the possibility that the conversion can be motivated by *bona fide* intentions and an actual change of heart or acceptance of the belief propagated by that religion. Thus, all neo-religious people get tainted with illegality.

It is objectionable that the law interferes with the right of a person to enjoy the religion of his choice. People are forced to go before a magistrate and subject the reasons for which they changed their religion to judgement and scrutiny from a Magistrate, thereby also undermining their right to privacy. It is thus clear that the problems that arise when the state seeks to interfere in the private domain are numerous.¹²

4. On Conversion: The Process and Occurrence

The contradictions that the law brings up necessitate a closer look into the realm of conversion itself and what forms of conversion could be objectionable. Religious conversion occurs when a person abandons his original religion and embraces another. This can occur for many reasons.

The foremost one is where the individual sees the inherent benefits of the chosen religion over his current one and truly believes in all the tenets proposed by it. No nation claiming to be secular can deny this right to its citizens.

The second is where a person believes that his conditions will be definitely improved when he becomes a part of a new religion and that all the disadvantages associated with the old one will be done away with. Examples are ample in cases of Dalits and other low caste people embracing Christianity or Islam in an attempt to achieve equality and acceptance. This too is an undeniable right of the people, and if there is any opposition to this recourse must be sought in bringing about parity between all the people of Hindu religion rather than imprisoning the

¹²V. Suresh, Shankar Gopalakrishnan, *Convert, and Be Damned! Combat Law*, Issue 7, <http://www.indiatogether.org/combatlaw/issue7/damned.htm>, accessed on 25/7/2007.

people in that religion. Ambedkar and his followers' mass conversion to Buddhism is such an example.

In his writings, Arun Shourie talks of how Christian missionaries are converting innocent and ignorant people to Christianity by offering various inducements such as free education, free medical facilities and employment opportunities.¹³ Thus he is consciously ignoring the fact that millions of poor and illiterate Indians vote freely and fairly than literate and elite class of the country. The Indian constitution granted all its citizens the right to vote. Right from the first general election in 1952, India's poorest and most marginalized sections have possessed the right to vote. And they have been the most keen to exercise this right. Unlike the global trend of a steady decline in voting levels, in India voter turnout over the years has either increased or remained stable. And what makes this rise in voter turnout significant is that it is spurred by the rise in participation in elections by the poor, women, lower castes and Dalits and tribals. The most vulnerable sections of Indian society are increasingly enthusiastic in using their conscious will in voting. They are also able to do such choices in the matters of religion, freely and conscientiously.

People make changes in their lives, to secure some material benefits and an improved quality of life. People move jobs, shift houses; some even change names and skin colour – all for some tangible or intangible benefit. Thus if the state cannot provide amenities to people which they can get from propagators of other religions it is pure tyranny to prevent their conversion and keep them rooted in their abject poverty. Instead, the need to attain benefits through the religious arena should be done away with by improving state performance and delivery.

Conversion of people from low castes who are generally backward and uneducated is also looked upon as forcible and illegal. The logic applied for this conclusion is that their lack of awareness or better knowledge makes the acts or words of the propagator forcible. Here, the state is essentially denying that these people even have the ability of conscience let alone the freedom of conscience. An accurate synonym for conversion, as we are using the word here, would be transformation which is voluntary. Put simply, conversion is a basic and marked improvement

¹³Arun Shourie, *Harvesting our Souls*, New Delhi: ASA publications, 2000. Given in this book are examples of conversions that clearly affect Hindu sentiment more than violate the law. Due to the paucity of space it is not possible to list all of these.

on the willing level of the human person. Even more pointedly, it is a fundamental change in our willed activities from bad to good, from good to better, and from better to best.

It also does not strike them that for matters such as religion or faith no superhuman intellect, alien knowledge or education is required.¹⁴ By denying ‘agency’ to the converted persons, by denying them the very ability to make an objective and rational choice of changing their religion, the law makers are, in real terms, ensuring that the religious and caste based status quo in the majority religion is maintained.

Finally there are the conversions which are actually forced, such as those that took place during partition when many Hindus were forcibly made to convert to Islam and accept their tenets and practices such as circumcision, consumption of beef, etc. But to tackle these instances the existing criminal laws are more than sufficient. All that needs to be stepped up is the efficiency of law and order.

The existence of specific Anti-Conversion laws serve not to prohibit and deter conversions of the last category enumerated above, but instead to prevent conversions from the majority religion to another is a reflection on the existing political standards in the country today. Political parties ranging from BJP to the self-proclaimed secular Congress party have all passed and given assent to such laws.¹⁵ Thus there arises the doubt as to whether the conversion propaganda is merely a vote capturing mechanism.

5. Judicial Response

It is now left to examine why the Judiciary gave constitutional assent to these laws and held them valid. In *Rev. Stainislaus v. State of Madhya Pradesh*¹⁶ the court held the following:

That propagation of one’s religion is different from conversion. The right to propagate is not the right to convert but to transmit or spread one’s religion by an exposition of its tenets. This is because conversion would impinge upon the ‘freedom of choice’ of the converted individual.

Firstly, it must be realised that all conversion from one religion to another is done by an exposition of its tenets. Hence to allow the procedure but to

¹⁴Marc Galanter, *Secularism East and West*, 7 Comparative Study in Religion and History (1965), 133-140.

¹⁵S. Gurumurthy, “Sister Sonia, He Wanted a Total Ban on Conversions!” *Indian Express*, October 2002, www.gurumurthy.net, accessed on 26/7/2007.

¹⁶*Rev. Stainislaus v. State of Madhya Pradesh*, AIR 1977 SC 908.

outlaw the result is ridiculous logic. Also, the court assumes that the process of conversion does not include the agency of the converted individual. Conversion is equally the right of the person who is sought to be converted; as such it is of no consequence to him if it is not a part of the freedom of propagation of the religious group to which conversion is made, provided he is not subjected to force/fraud and inducement. Thus the entire process of conversion is in reality an exercise of the converted persons' freedom of conscience and freedom of religion.

That the obscure definition of the terms allurements, fraud, force etc. made it impossible to decide whether they affected the fundamental rights of minorities to propagate their religion.

This is essentially leaving the door open for misuse by not interpreting or assigning a constitutionally valid meaning to the impugned terms. Using the vague nomenclature the state can bring under the law a number of *bona fide* legal activities of minorities.

The State Legislature is competent to pass the Act as it comes under Entry I of List II relating to public order and Entry I of List III relating to criminal law. Conversions generally affect the community at large and result in a breach of public order.

The rationale in *Yulitha Hyde v. State of Orissa*¹⁷ was that the Orissa Act was not related in 'pith and substance' to 'law and order' nor did it prescribe a new criminal offence, forcible conversion already being covered by the limitation to which article 25(1) was subject – but instead related solely to religion and hence should be included in List I under Entry 97. This is absolutely true as the Act seeks to curtail the religious activity of certain religious communities.¹⁸ Also the logic that all conversions will result in a public order problem is skewed as it essentially places the act of conversion completely in the public domain. Choice of religion is a private domain and not a matter of public concern. This subjects the right to freedom of religion to the scrutiny of society at large, thus causing the individual to lose the right to privately change his religion.

The meaning of propagate is to spread, transmit, diffuse, extend. This means the extension only of the tenets of the religion not of its members.

¹⁷*Yulitha Hyde v. State of Orissa*, AIR 1973 Ori 116.

¹⁸Though this case was reversed in entirety by *Stainislaus v. Madhya Pradesh*.

In interpreting the term propagation the Court has referred to numerous dictionaries, ignoring the historical context or the constituent assembly debates. To assign a benign meaning to a word which when placed in context obviously means something completely different displays a sort of enforced blindness of the judges.

If a person ‘purposely’ undertakes conversion then this would impinge on the ‘freedom of conscience’ of all other people.

It must be pointed out that the freedom of conscience¹⁹ cannot be violated by conversion as long as no fraud is involved. The power to control another person’s thoughts is alien to us, and only through express *mala fide* acts can we achieve something close to this.

It completely ignores the internal contradictions in the Anti-Conversion Laws referred to above.

Facts such as all Fundamental Rights are complementary and supplementary to each other and cannot be viewed as mutually exclusive or in isolation have been ignored. As opined by the framers of the constitution, the freedom of speech and expression goes hand in hand with the right to propagate ones religion.

The judgement delivered in the *Yulitha Hyde* case on the other hand has several noteworthy points.

Article 25 (1) of Indian Constitution guarantees propagation of religion and conversion is a part of the Christian religion.

Thus to deny to Christians the right to follow one of the most fundamental tenets of their religion would lead to India losing its secular character. Essential propagation may lead to conversion and the granting of the former implies the granting of the latter.

Prohibition of conversion by ‘force’ or by ‘fraud’ as defined by the Act would be covered by the limitation subject to which the right is guaranteed under Article 25 (1).

Thus the need for the impugned legislation which is full of legal flaws and loopholes for misuse and abuse is nonexistent.

The definition of the term ‘inducement’ is vague and many proselytizing activities may be covered by the definition and the restriction in Article 25 (1) cannot be said to cover the wide definition.

Again the capacity of the Act to be misused is highlighted.

¹⁹Referred to in the American Constitution as the ‘Freedom of Thought’.

In the recent case *Commissioner of Police v. Acharya Avadhuta*²⁰ it was held that the article 25(1) gave protection to the fundamental parts of all religions. Thus when propagation is essential to the religion it must be allowed as long as it is not *mala fide* or fraudulent.

6. Conclusion

Fundamentally, the anti-conversion law is a legally dressed up expression of Hindutva paranoia and hatred. It is also one more testimonial to the alacrity with which all our institutions have collapsed in the face of the saffron brigade. A confused legal understanding of the Constitution and a cynical manipulation of religious sentiment have triumphed over both democracy and human rights.

Such political manipulation of sentiments cannot be permitted to derail vital fundamental rights in a state wedded to the rule of law. Laws against ‘forced conversions’ form the thin end of a wedge that will rapidly expand to wipe out all of our fundamental rights and all the tenets of our democracy. It is time we returned to the sensitivity and understanding of the Constituent Assembly and to the values that its members enshrined in our Constitution. Without those values, sooner or later we will face the collapse of our political system and an era of tremendous violence. Ironically, these ‘anti-conversion’ laws were enacted in the name of controlling violence, but they are themselves an expression of the ideology that has created mass violence in the country.

Secular forces believe Anti Conversion laws as another draconian step toward curtailing human rights. Liberals affirm that this legislation would be a very bad and unrealistic piece of legislation that would suppress the individual and human rights and urge the government not be a party to endorse the whims and fancies of religious fanatics and extremists.²¹ Anti Conversion laws paved the way for the oppression of minority religions in the country.²² It is a credible claim that the legislation will ‘seriously erode’ the freedom of thought, conscience and religion guaranteed in the constitution and sanctioned by international conventions.

It is precisely this aspect that K. M. Munshi referred to during his winding up speech in the debate during the passing of Article 19 (now Article 25), which guarantees the right to religion. He argued that conversion by free exercise of conscience has to be recognized as the

²⁰*Commissioner of Police v. Acharya Avadhuta* (2004) 12 SCC 770.

²¹<http://www.dailynews.lk/2004/07/14/new24.html>

²²http://www.hindustantimes.com/2004/Jul/01/181_860519,00050002.htm

Constitution guarantees freedom of speech. Religious communities are free to persuade other people to join their faith. It was on this basis that, after prolonged debate, the Constituent Assembly felt it necessary to include the term ‘propagate’ separately in Article 19 (now Article 25) guaranteeing that the right of religion meant freedom of conscience and the right freely to profess, practice and propagate religion. By denying the ‘right to convert’ the court was reducing the right to propagate religion to a mere slogan.

Thus Anti-Conversion Laws are indeed a fraud on the constitution and of democracy of India. They flout what the framers had in mind when the constitution came into force as dictated by the constituent assembly debates. They have been blatantly misused against minority religions alone, while re-conversions to the majority religion have been permitted.²³ Mahatma Gandhi himself was against proselytisation – “If I had the power to legislate, I should stop all proselytisation work.”²⁴ In 1954, the Neogi committee was constituted to study conversions in tribal areas and found that in many areas uplift of the tribals included conversion to Christianity. There have been instances, predominantly in pre-independence times when conversion has been done without the exercise of free conscience by the person being converted. However, the problem with the Anti-Conversion laws is that it seeks to prevent conversion on the whole, while true instances such as the above mentioned are only incidental. It is shocking that the judiciary has given assent to these legislations as they are being used by the executive to subjugate the minority, arouse the majority by converting their fears into votes, and thus destroy India’s secular character.

²³Ram Puniyani, *Intimidating a Minority*, www.countercurrents.org - 3/2/2006, accessed on 28/7/2007.

²⁴*Young India*, 5.11.1935.